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C O N F I D E N T I A L SECTION 01 OF 03 LJUBLJANA 000149

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TAGS: [PREL](#) [EUN](#) [PGOV](#) [HR](#) [SI](#)

SUBJECT: SLOVENIA SEEKS ANOTHER ROUND OF "QUIET" TALKS WITH CROATIA, REHN

Classified By: CDA Brad Freden, Reasons 1.4 (b,d)

Summary

1. (C) Iztok Mirosic, the MFA Coordinator for Croatia and U/S equivalent Director for Bilateral Affairs, briefed CDA on May 15 on Slovenia's response to the latest Rehn proposal, which it formally submitted to Rehn on May 18. Mirosic explained that the government was very concerned that there be a fair process that it could sell to the public, and thus had consulted intensively with parliamentary parties in order to formulate a response that had a majority consensus behind it. Mirosic deemed that Slovenia's response protected Slovenia's redlines and ensured a fair process for arbitration, so that no matter the eventual result of the arbitration, the government could defeat a likely referendum about Croatia's EU accession. However, we recognize that Slovenia's two "vital amendments" to the Rehn proposal -- concerning possible territorial contact with the high seas and inclusion of the term "ex aequa et bono" -- are anathema to Croatia. Embassy Ljubljana does not see any easy way out of the current impasse, but we offer several interim recommendations in para 7. End Summary.

Slovenia's Political Realities Lead to a Qualified Yes

2. (C) Mirosic explained that the government was focused on building a case it could sell to the Slovenian people to ensure a positive Slovenian vote for Croatia's EU accession. The government had held extensive consultations with the parliamentary parties to ensure that there was a political consensus for Slovenia's response. Mirosic emphasized that the government needed to be able to sell it to the public and Parliament. If it could assure them that it had done everything possible to guarantee that Slovenia's interests were taken into account in the process, then the majority would accept the outcome of the arbitration, whatever it might be. He acknowledged that Slovenia's response was not unanimous. Two opposition parties, SLS and SNS, remained against a positive response to Rehn and SNS leader Jelencic had already warned to expect a referendum. However, the government had on board Jansa and SDS, the largest opposition party, and so believed that together they could defeat a referendum. The government was looking at this in the context of the end results: ratification of Croatia's EU accession. If the mandate of the arbitration tribunal did not take into account Slovenia's redlines, ratification would fail.

Slovenia's Amendments

3. (C) According to Mirosic, Slovenia had proposed "minimal"

changes to the text, but two of the changes were so vital that Slovenia viewed them as redlines, and a third was required by Slovenia's constitution. He reviewed Slovenia's changes to the text with us:

Vital amendments:

-- territorial contact with the high seas moved to Art 3 (1)(a) regarding the border, not the regime for the maritime area (Art. 3(1)(b)), plus adds the word "territorial";  
-- Adding the term "ex aequa et bono" to Art. 4: Applicable law.

Constitutionally required amendment:

-- Adding that Slovenia's reservations will be lifted after ratification of both Parliaments. This could be done either in Art. 9 or in the Joint Declaration. Mirosic noted that the FM did not have the power to bind Slovenia to the agreement through his signature, but it needed both Parliaments' ratification.

Other Proposals:

Art 2: Composition of the Arbitral Tribunal - to discuss its establishment and the application of the Optional Rules of the ICJ Court in the Hague.

Art. 8: EU Accession negotiation documents - adding a safeguard in case of future arbitrations.

Next Step: Hear from the EU ...  
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14. (C) According to Mirosic, Slovenia had alerted Rehn as to what its response would contain in advance of formally submitting it on May 18. Slovenia would wait for a response from Rehn and the Trio, but expected negotiations to continue. Mirosic stressed that Rehn did not say his April 24 proposal was a "take it or leave it" proposal, and neither was Slovenia's response. However, Slovenia's redlines would have to be taken into account. Mirosic mentioned that he understood that Rehn would be out of Brussels this week, so he expected a meeting the week of May 25 or the following week. After Rehn and the Trio respond, Slovenia would determine whether there was still sufficient basis for broad domestic political support, to include Jansa's SDS. On May 18, we discussed the situation with the Swedish and Czech Ambassadors resident in Slovenia, who agreed that Rehn is still the only game in town. They are even more concerned than we are that pressuring Slovenia to accept a deal now would very likely result in a "no" vote down the road on Croatia's EU accession.

... And Keep Rhetoric Down  
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15. (C) Mirosic stated that Slovenia was "astonished" by Sanader's recent rhetoric along the lines that "the Slovenian people are good, the leadership is bad." Mirosic claimed the language was identical to that used by Milosovic in 1989 when threatening to force changes in the Slovenian leadership. Mirosic commented that PM Pahor had shown restraint, noting simply that Croatia was in a pre-election period and such rhetoric should not be taken too seriously. He requested our continued assistance in encouraging Zagreb to tone down its public rhetoric.

Comment and Recommendations  
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16. (C/NF) When it comes to the Rehn proposal, Slovenia really only cares about one issue: the maritime border. We recognize that Slovenia's two "vital amendments" to the Rehn proposal -- concerning territorial contact with the high seas and inclusion of the term "ex aequa et bono" -- are anathema

to Croatia. We note, however, that Slovenia recognizes that including reference to the above in the mandate of the arbitration tribunal does not predetermine the tribunal's decision regarding the maritime border. It simply leaves open the possibility that Slovenia will get what it is seeking. If both sides can agree in principle that they will not foreclose in advance the possibility of an outcome that meets Slovenia's perceived needs, then determining how to do so should be a matter of straightforward negotiation. If, however, Croatia feels that it must foreclose in advance the possibility that the tribunal would decide to award Slovenia some form of contact with the high seas, then we see little hope of reaching an agreement in the near term.

17. (C) Recommendations:

The Rehn process is the only game in town and should not be allowed to die, at least not yet. We should urge both sides to engage in another round of closed-door negotiation with Rehn, with the goal of reaching an acceptable agreement by the time of the June 26 Intergovernmental Council (IGC).

Engage the Trio, and perhaps other member states, in Brussels and capitals. The likelihood of success will increase if the U.S. and the Trio have parallel (though not necessarily identical) approaches to this issue.

Both sides should be encouraged look for opportunities to reduce tensions by, for example, focusing public attention on aspects of the relationship where interests coincide, e.g., economy, environment, culture, education, etc. The current focus on a single issue is poisoning the atmosphere between the two countries.

Both sides should seriously consider unilateral "confidence-building measures." For example, we are urging Slovenia to unilaterally lift its blockade on one or two chapters of the *acquis* as a sign of good will. We look to our colleagues in Washington, Brussels and Zagreb for additional suggestions that could be taken unilaterally by either side without compromising their basic negotiating position.

Both sides need to dispense with the public bombast if they are serious about finding a solution to this problem.

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FREDEN